



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200912042

DEC 24 2008

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer A = *****

Financial Advisor B = *****

Financial Institution C = *****

Financial Institution D = *****

SEP IRA Account 1 = *****

Amount 1 = *****

Amount 2 = *****

Dear *****:

This is in response to a letter dated March 4, 2008 in which your authorized representative requests, on your behalf, a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age **, is a self-employed physician and a single mother, who established and maintained a simplified employee pension/individual retirement arrangement ("SEP IRA Account 1") with Financial Institution D pursuant to section 408(k) of the Code.

During the late ****, Taxpayer A met and began using the services of Financial Advisor B, an employee of Financial Institution C, an independent broker dealer. In ****, Taxpayer A became Financial Advisor B's client and from **** until the summer of ****, he served as her primary financial advisor. Taxpayer A relied heavily on Financial Advisor B's advice in many of her personal financial decisions, including matters pertaining to her retirement program.

In the summer of ****, Financial Advisor B recommended that Taxpayer A invest Amount 1 from SEP IRA Account 1 into a short-term investment of less than 60 days. After being convinced by Financial Advisor B that the money could be rolled over, Taxpayer A withdrew the money from SEP IRA Account 1 and, on **** and **, ****, delivered the funds to Financial Advisor B to be invested on her behalf. On ****, ****, the Taxpayer delivered to Financial Advisor B two personal checks totaling Amount 1, made out to Financial Institution D as her IRA trustee, for redeposit into SEP IRA Account 1. Financial Advisor B assured Taxpayer A that he had redeposited her withdrawn IRA funds with Financial Institution D and she assumed that the withdrawal and redeposit had met the requirements for a tax-free rollover."

Taxpayer A's reliance upon Financial Advisor B proved to be misplaced. In ****, ****, the FBI notified Taxpayer A that Financial Advisor B was being investigated for theft, fraud, and other violations. Upon further investigation, the Taxpayer discovered that Financial Advisor B had stolen a substantial majority of her entire savings, and most of the money from custodial accounts maintained for her two children. The checks that she had given to Financial Advisor B to complete a rollover of funds back into her IRA were never redeposited with Financial Institution D. By the time Taxpayer A learned that she had been defrauded, the 60-day period allowed under Code section 408(d)(3) for a rollover of Amount 1 back into SEP IRA Account 1 had expired.

Taxpayer A immediately sued Financial Advisor B and his employer, Financial Institution C. On ****, ****, Taxpayer A, through mediation proceedings, received Amount 2 from Financial Institution C in settlement of claims against it arising from the activities of Financial Advisor B. The settlement with Financial Institution C included Amount 1, Taxpayer A's SEP IRA assets. In March 2008, the Taxpayer filed this ruling request.

Taxpayer A requests that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1, so that she may redeposit Amount 1 in a SEP IRA account.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable

control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

In this case, Taxpayer A withdrew Amount 1 from SEP IRA Account 1, relying on assurances from the trusted, but dishonest Financial Advisor B that the money could be refunded to a qualified IRA within 60 days, thus avoiding the imposition of tax on the withdrawal. Moreover, to assure that she completed a nontaxable rollover of her funds back to SEP IRA Account 1, Taxpayer A, on the 59th day, delivered two checks totaling Amount 1 to Financial Advisor B with specific instructions to redeposit the amounts back into SEP IRA Account 1. Having been assured by Financial Advisor B that the redeposit had been completed timely, Taxpayer A erroneously assumed that a valid rollover of Amount 1 had taken place into SEP IRA Account 1, and that she was not subject to tax on account of the withdrawal. Taxpayer A only became aware of a problem after she was contacted by the FBI and informed that she had been defrauded. Moreover, Financial Institution C assumed responsibility for the malfeasance of its employee and reimbursed Taxpayer A not only for Amount 1, but also for substantially larger financial losses experienced by her and her family.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was beyond her reasonable control within the meaning of section 408(d)(3)(I) of the Code, and occurred despite her due diligence in attempting to assure that Amount 1 was redeposited timely in SEP IRA Account 1. Moreover, the failure to accomplish this rollover was caused by the numerous errors, and violations of law and fiduciary responsibility committed by Financial Institution C's employee.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from SEP IRA Account 1. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute a portion Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code,

200912042

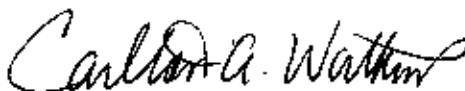
except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you wish to inquire about this ruling, please ***** address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1